REMARKS/ARGUMENTS

This Amendment responds to the office action dated September 6, 2006.

The Examiner has rejected all pending claims under 35 U.S.C. § 103(a) as being obvious in view of combinations involving Pornrodeo, after concluding that applicant's affidavit under 35 U.S.C. § 131 was insufficient to antedate the reference because it failed to fully support an "actual reduction to practice." The Examiner's rejection relies upon two related, erroneous contentions. First, the Examiner asserts that the supporting code filed with the declaration "discloses exactly the same subject matter (and nothing more) as the Tetrode reference, dated 26 August 1996." *See* Office Action at p. 15. After examining the Tetrode reference, the applicant notes that this assertion by the Examiner is false. That reference is nothing more than a conversation in a discussion forum where one party indicated a desire to have a *pop-up* window *over* a first browser window, where the pop-up window included code showing an active text field to a user which, *when clicked by a user*, moved the pop-up window to a background window. In other words, Tetrode failed to disclose the claimed step of "a script handler that invokes a post-session procedure in said first browser, said post-session procedure *opening* a second browser *in a said background window.*" Rather, Tetrode merely disclosed opening a second browser in a foreground window, *where it remained until such time as a person browsing the window chooses to push the foreground window to the background.* Furthermore, during the course of that on-line conversation, the requesting party indicated that his code *was not working* and asked for suggestions. During the subsequent conversation, no indication was given that any of the suggestions made in response to the query *actually worked.* To the contrary, the discussion thread only indicates that, not only did the original code not work, but the suggestions returned were fruitless, as well. Hence, it is not clear whether Tetrode is even available as a prior art reference against the present application. *See* MPEP § 2121.01; See also MPEP § 2122 (evidence showing that prior art attempts at the claimed subject mater were unsuccessful are adequate to show inoperability.)

In contrast, the code submitted with the applicant's declaration opens a second browser which includes code that *itself* causes the window of the second browser to be located in the background with respect to the first browser window. Moreover, the

supporting code filed by the applicant specified that the "second browser" that is opened in the background displays the linked content of the site www.happytime.com, which further distinguishes over Tetrode. Thus, the Examiner's assertion that the applicant's declaration establishes nothing more than that which was in existence at the time is in error.

The Examiner also argues that the code submitted with applicant's declaration fails to "disclose or suggest the use of the disclosed popunder window script for the purpose of advertising or promotion." *See* Office Action at p.17. Inexplicably, however, the Examiner simultaneously argues that Pornrodeo *does* disclose the use of a popunder window for advertising or promotion, even though the relevant disclosure of Pornrodeo does nothing more than that done by the code applicant provided, i.e. open a link to a porn site. *See* Office Action at pp. 15, 22 (contending that by opening a window to www.pornrodeo.com/geisha/main.html, the Pornrodeo source code at http://Pornrodeo.com advertises the content of the opened window). To clarify any uncertainty on the part of the Examiner, enclosed with this response is an information disclosure statement attaching the contents of a web page identifying the site "www.happytime.com" as a porn site that is opened, in a new browser window, by a first browser containing code with instructs to open the site www.happytime.com. In any event, since the applicant has submitted evidence of a prior reduction to practice of all relevant aspects of the Pornrodeo reference, the Examiner can no longer cite that reference against the applicant. *See* Office Action at pp. 16-17 ("the requirements for an affidavit under 35 U.S.C. § 1.131, in light of the CCPA decisions rendered in *In re Stryker* and *In re Dardick*, in removing a secondary reference used in a rejection under 35 U.S.C. § 103(a) is that (1) the showing . . . be adequate to read on the subject matter disclosed by said reference and that (2) the differences between the claimed invention and the reference disclosure are so small as to render the claims obvious over the reference." (emphasis added and citations omitted). Therefore, applicant's affidavit does remove Pornrodeo as a reference.

The Examiner indicated that, were Pornrodeo removed as a reference, the Examiner would be obliged to reject the claims as being obvious over the combination of

Landsman and Tetrode. As already noted however, the Examiner misreads Tetrode, which does not disclose a pop-under window, but a pop-up window having an activatable field that allows a user to move the pop-up window to the background. Further, unlike both Pornrodeo and the applicant's reduction to practice prior to Pornrodeo, Tetrode fials to disclose including any kind of advertising content in the new window being opened by the code in the web browser. Thus, any rejection of the Examiner on the basis of the combination if Landsman and Tetrode would be improper.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 21-42.

Respectfully submitted,

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